



0000042214

W-02104A-01-0742

P. 03 31EX

RECEIVED

AUG 01 2003

PIMA COUNTY DEPARTMENT OF ENVIRONMENTAL QUALITY
TECHNICAL SERVICES DIVISION
130 West Congress--Tucson, Arizona 85701-1317
Telephone: 740-3340

CERTIFICATE OF APPROVAL TO CONSTRUCT
Water and/or Wastewater Facilities

System Name: VOYAGER WATER COMPANY System No.: 10-035

Project Owner: VOYAGER WATER COMPANY

Address: 8701 S. KOLB ROAD, TUCSON, AZ 85706

Project Location: T-15-S, R-15-E, SECTION 29 County: PIMA

Description: 12-INCH WATER LINE TO SERVE KOLB ROAD EXTENSION

Approval to construct the above described facilities as represented in the approved plan on file with the Pima County Department of Environmental Quality is hereby given subject to the following provisions:

AFTER COMPLETION OF CONSTRUCTION, THE RECEIPT OF AN ENGINEER'S CERTIFICATE OF COMPLETION AND ACCEPTANCE BY PIMA COUNTY, ACCURATE "AS BUILT" PLANS, PRESSURE TEST RESULTS AND MICROBIOLOGICAL TESTING RESULTS SHALL BE PREPARED AND SUBMITTED TO PIMA COUNTY DEPARTMENT OF ENVIRONMENTAL QUALITY IN ORDER TO OBTAIN AN APPROVAL OF CONSTRUCTION. THOSE PLANS MUST BE CLEAR BLUELINE PRINTS SUITABLE FOR MICROFILMING AND SHALL CLEARLY AND ADEQUATELY REPRESENT THE FACILITIES AS THEY ARE CONSTRUCTED.

The State law, A.R.S. 49-353, requires that construction of the project must be in accordance with the rules and regulations of the Arizona Department of Environmental Quality.

If project includes trenching, land stripping, earthmoving or road construction, an air quality activity permit may be required pursuant to P. C. C. Title 17.12.470. For inquiries, regarding air quality activity permits, please call Melissa Geier at 740-3957.

If construction has not started within one year of the date of this issue, this certificate will be void and a written extension of time shall be required.

Date Approved: July 29, 2003
Arizona Corporation Commission

DOCKETED

NOV 17 2003

DOCKETED BY

Ursula Kramer,
Director

By:

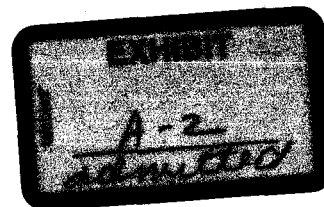
Eric Shepp, P.E.
Interim Technical Services Manager

By:

Mike Redmond, R.S.
Sr. Civil Engineering Asst.

cc: P-File No. PO29303
P-ADHQ, SRO
Voyager Water Company
Engineer-Westland Resources

G:\Tech\Plan Review\APPROVAL\PO29303.wcr.doc



BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
VOYAGER WATER COMPANY FOR AN)
EXTENSION OF THE SERVICE AREA UNDER) DOCKET NO.:
ITS EXISTING CERTIFICATE OF) W-02104A-01-0742
CONVENIENCE AND NECESSITY TO PROVIDE)
WATER UTILITY SERVICE.)

At: Phoenix, Arizona

Date: October 29, 2003

Filed: NOV 17 2003

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ARIZONA REPORTING SERVICE, INC.

Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1126

By: COLETTE E. ROSS
Prepared for: Certified Court Reporter
Certificate No. 50658

ACC

ORIGINAL

**FOR
INTERNAL
&
INTERAGENCY
USE
ONLY**

Pursuant to the contract with Arizona Reporting Service all transcripts are available electronically for internal agency use only.

Do not copy, forward or transmit outside the Arizona Corporation Commission.

INDEX TO EXAMINATIONS

1			
2	WITNESSES		PAGE
3	DOUG DUNHAM		
4	Direct Examination by Ms. Savel		13
	Cross-Examination by Mr. Ronald		29
5	Examination by ALJ Wolfe		30
	Redirect Examination by Ms. Savel		34
6			
7	MARK WEINBERG		
8	Direct Examination by Ms. Savel		36
	Cross-Examination by Mr. Ronald		46
9	Examination by ALJ Wolfe		48
10			
	JIM FISHER		
11			
	Direct Examination by Mr. Ronald		50
12	Examination by ALJ Wolfe		54
	Cross-Examination by Ms. Savel		57
13			
14			

INDEX TO EXHIBITS

15			
16	NO.	DESCRIPTION	IDENTIFIED ADMITTED
17	A-1	Analysis of Assured	9 17 50
18		Water Supply, Dated	
19		10/11/2002 for Voyager	
		Expansion	
20	A-2	Pima County Department	17 9 50
21		Approval to Construct for	
		Water Main in Kolb Road	
22			
23			
24			
25			

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 1:31 p.m. on the 29th of October, 2003.

6

7

8

BEFORE: TEENA I. WOLFE, Administrative Law Judge

9

APPEARANCES:

10

For the Arizona Corporation Commission:

11

Mr. David M. Ronald
Staff Attorney, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007-2927

14

For the Applicant:

15

LEWIS AND ROCA, L.L.P.
By Ms. Mary Beth Savel
One South Church Avenue, Suite 700
Tucson, Arizona 85701

18

19

COLETTE E. ROSS
Certified Court Reporter
Certificate No. 50658

20

21

22

23

24

25

6100000982

1 ALJ WOLFE: Good afternoon, and welcome to the
2 Arizona Corporation Commission. My name is Teena Wolfe
3 and I am the administrative law judge assigned to this
4 matter.

5 This is the time and place setting for the
6 hearing on our request to amend Decision No. 64406, dated
7 January 31st, 2002, in Docket No. W-02104A-01-0742 in the
8 matter of application of Voyager Water Company for an
9 extension of the service area under its existing
10 certificate of convenience and necessity to provide water
11 utility services.

12 We will begin today by taking appearances
13 beginning with the applicant.

14 MS. SAVEL: Mary Beth Savel with Lewis and
15 Roca, One South Church Street, Suite 700, Tucson 85701,
16 for Voyager Water.

17 ALJ WOLFE: Thank you, Ms. Savel.

18 For Staff?

19 MR. RONALD: David Ronald appearing for Staff.

20 ALJ WOLFE: I guess I will just cover
21 procedural matters first. Ms. Savel, do you plan to call
22 just one witness?

23 MS. SAVEL: Your Honor, I plan to call two
24 witnesses, Mark Weinberg from Diamond Ventures, who is one
25 of the master developers that will be involved in the

2860000719
1 extension area, and Doug Dunham from the Arizona
2 Department of Water Resources, who is the manager of the
3 assured water supply division.

4 ALJ WOLFE: Okay. And, Mr. Ronald?

5 MR. RONALD: Possibly Jim Fisher.

6 ALJ WOLFE: Okay. I would like to hear from a
7 Staff witness.

8 MR. RONALD: Okay.

9 ALJ WOLFE: Do you wish to make an opening
10 statement, Ms. Savel?

11 MS. SAVEL: I thought we would just bring us
12 up to speed procedurally, and also a little factual
13 background on where the status of the development is so
14 that we can put this in context. And then I thought I
15 would go ahead and call Mr. Dunham and let him go ahead
16 and testify so we could get him back to his office and not
17 take his whole afternoon. And then Mr. Weinberg will come
18 back and we will be finished. Okay?

19 As you know, on January, on January 2002, the
20 ACC granted the conditional certificate of CC&N
21 extension for about 290 acres which is adjacent to the
22 existing Voyager Water Company service area. There are
23 two owners of that extension property, Diamond Ventures,
24 through its company WPI, WPI & Kolb I10 L.L.C., which I
25 just refer to as WPI because I can't say that many words,

1 and Voyager RV Resort which is the Voyager Water -- is
2 associated with and owned by Isaacson but is a separate
3 entity for the water company. It is a separate entity.

4 Voyager owns about 64 acres of that extension
5 area. WPI owns about 226 acres so they are the larger of
6 the two property owners receiving services.

7 At the time that the Decision 64406 was
8 granted, it was conditioned that Voyager return with
9 either a certificate or a designation of assured water
10 supply for the entire 290 acres of the expansion area and
11 also to return with ADEQ approval to construct for
12 expansion of the infrastructure.

13 The order itself says for the area to be
14 developed by Diamond Ventures and the area to be developed
15 by RV Resorts. We concluded that means the entire area to
16 be included in the expansion area, although it is not
17 entirely precise.

18 So one of the reasons we want to be before the
19 Administrative Law Judge and the ACC is to get a
20 modification or clarification of what that area should be
21 in terms of the areas to be covered by the approvals to
22 construct.

23 On October 11th, 2002, we received from the
24 Arizona Department of Water Resources, and when I say we,
25 I mean Voyager Water Company, an approved analysis of

6100000982
1 assured water supply, not a certificate, not a
2 designation, but an analysis of assured water supply. And
3 one of the reasons that I invited Mr. Dunham to come and
4 talk to us today was to give us a little background on the
5 role of the analysis and how it works with the certificate
6 or the designation in the development of the property for
7 assuring water supplies.

8 That analysis was attached as an exhibit to
9 our request to modify or amend Exhibit A. And the court
10 reporter has marked it here today as Applicant's
11 Exhibit 1. And we may, Mr. Dunham may refer to it in his
12 testimony.

13 The analysis found that the extension area
14 contains the physical, continuous and legal availability
15 of water for 100 years. It was based upon a hydrological
16 study which found that.

17 It also found that the available water quality
18 was of adequate water quality under ADEQ requirements and
19 found that the proposed water use appeared to be
20 consistent with the Third Management Plan and goes for the
21 Active Management Area in Tucson.

22 Finally, the analysis from ADWR indicated that
23 they would wait for an establishment of the financial
24 capability of the expansion of infrastructure improvements
25 for submittal at the time that each subdivision is

2860000019

1 prepared and platted for development.

2 And so when we came back in December of 2002,
3 the Voyager Water Company came back to request to extend
4 the time period on the conditional CC&N because things had
5 taken a little longer than expected. Primarily the
6 property needed to be rezoned by the jurisdiction in the
7 City of Tucson in which it is located.

8 That process is moving along fairly well. The
9 226 acres owned by WPI was rezoned by the City of Tucson
10 Mayor Council in May of 2003 effective in June. Since
11 that time, WPI has been working on preparing its platting
12 for that property.

13 For the 64 acres owned by Voyager RV Resort,
14 the rezoning has taken a little longer. It went through a
15 public hearing this summer. And, at the request of the
16 Mayor Council, the actual consideration was continued
17 until November 17th. They wanted to wait until after the
18 elections in Tucson to consider the rezoning. And so it
19 is scheduled for consideration by the Mayor Council coming
20 up in November.

21 And then, assuming the rezoning is approved,
22 which there is no reason to think it wouldn't be, it would
23 become effective 30 later. And after that, platting for
24 that 64 acres will begin and will be -- the preparation
25 and then submittal and processing for plat approval

1 through the City of Tucson will be done in the next nine
2 months or so. So the process is going forward.

3 Finally, we do have some, we have an approval
4 to construct received from the Pima County Department of
5 Environmental Quality for the off-site water extension in
6 Kolb Road. The plans are in place and in with the
7 Department of Environment Quality in Tucson to go ahead
8 and approve the reservoir extension as well as the -- just
9 let me check.

10 The reservoir and the booster station plans
11 have been submitted for approval. And they are -- and at
12 this point in time that is probably as far as the
13 engineering staff can go in submitting improvement plans
14 for the expansion area until the further subdivision of
15 the property has been implemented. And we do have a copy
16 of the Pima County's certificate of approval to construct
17 for the water main in Kolb Road. It has been identified
18 as Applicant's Exhibit 2 if we introduce it for the court,
19 for the record.

20 So we are here today to request that the ACC
21 modify or amend the existing decision affecting the
22 conditional expansion of the CC&N area. We submitted our
23 request for that on June 26, 2003. Our deadline for
24 completing the conditions was November 1st, 2003, which is
25 coming right up around the corner.

2860000982

6100000982
1 Obviously we won't be done with the rezoning
2 because we won't be done with the subdivision plat
3 approvals by that time. But rather than us ask for an
4 extension at the end of the year, Voyager decided to ask a
5 little something more, a little bit different.

6 The things we are asking for, number one, are
7 that the ACC accept the October 2002 analysis of assured
8 water supply as approved by ADWR as an adequate assurance
9 of assured water supply for this particular expansion area
10 and thereby no longer condition the expansion but just go
11 ahead and approve it. And Mr. Dunham is here today to
12 talk a little bit about the analysis, what it provides and
13 that kind of thing so that the ACC will understand.

14 Second, we ask that the ACC eliminate the
15 requirement for a submittal of the certificate of assured
16 water supply or designation of assured water supply to the
17 ACC. ADWR will issue certificates of assured water supply
18 to individual subdividers when the subdivision plats are
19 ready to be submitted and ADWR will oversee that
20 certificate issuance. So we are proposing, rather than
21 that, having the ACC also do that, that we simply use the
22 analysis and let the certificates be submitted to ADWR in
23 the normal course.

24 In the alternative, if that's something the
25 ACC wouldn't be comfortable with, we would request,

61000000982
1 instead of the certificate having been submitted by the
2 water company or master developer, that it be submitted as
3 individual subdivision plats are completed and approved
4 and, rather than condition that on a time frame going
5 forward, we just go ahead and make that a requirement and
6 approve the expansion of the CC&N unconditionally with
7 that as a subsequent requirement.

8 And then, finally, coming back to the ADEQ
9 approvals to construct, we would request that, for the
10 same, for similar reasons, that we would ask for the
11 certificates to be submitted by the individual
12 subdividers. We would also ask that the approvals to
13 construct be submitted to the ACC along with line
14 extension agreements for the individual subdivisions as
15 they are done in phases, rather than all at one time up
16 front for the entire project because this is going to be a
17 phase project.

18 On August 18th the ACC Staff filed a response
19 indicating there was no objection to Voyager's request.
20 And since that time we have, we have consulted with Staff
21 and with legal counsel and are here before you to present
22 some more information and evidence to support our request.

23 So if I may go forward now, I would like to go
24 call Mr. Dunham unless the Court has any questions.

25 ALJ WOLFE: I have one question. In your

1 June 27th, 2003 filing, on page 5 you reiterated all those
2 requests to modify, but you didn't repeat number five.
3 Are you still asking for that elimination of the time
4 limits currently in effect for that decision?

5 MS. SAVEL: Yes, I would. That would kind of
6 be an umbrella request, instead of placing time limits on
7 the CC&N extension, the ALJ recommended to the ACC
8 removing any time limits and simply approve the CC&N
9 extension expansion and then place the requirements of
10 additional filings later on so it won't be conditional.

11 ALJ WOLFE: Okay. Mr. Ronald, do you have an
12 opening statement?

13 MR. RONALD: Just, Your Honor, that Staff
14 continues to not object to the request.

15 ALJ WOLFE: Okay. That has continued to
16 puzzle me, as the request has alternatives in it. So I
17 would like to know before the hearing is over which of
18 these requests Staff wants to be adopted.

19 MR. RONALD: I understand, Your Honor.

20 ALJ WOLFE: Okay. You may call your witness.

21 MS. SAVEL: I would like to call Doug Dunham.

22 ALJ WOLFE: You can come right up here and be
23 sworn, sir. And thank you for coming here.

24

25

1 DOUG DUNHAM,
2 a witness herein, having been first duly sworn by the
3 Certified Court Reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:
5

6 DIRECT EXAMINATION

7 BY MS. SAVEL:

8 Q. Mr. Dunham, would you go ahead and state your
9 name and your address for the record.

10 A. My name is Doug Dunham, D-U-N-H-A-M. I am
11 with the Department of Water Resources. Their address is
12 500 North Third Street, Phoenix, Arizona 85004.

13 Q. Mr. Dunham, what is your job with the
14 Department of Water Resources?

15 A. I manage the office of assured adequate water
16 supply.

17 Q. And what does that mean? What do you do in
18 your job?

19 A. The office of assured natural water supply
20 manages all of the applications for certificates of
21 assured water supply, analyses of assured water supply,
22 designation of assured water supply as well as the sister
23 applications outside of the active management areas in the
24 adequacy programs.

25 Q. We are going to talk today about the Tucson

61000006932
1 Active Management Area where Voyager Water Company is
2 located. And I am going to just take you through and ask
3 you to explain some of the background and the procedural
4 issues and the substantive purposes of some of these
5 different, different designations that you have talked
6 about today.

7 And I thought we would start first with the
8 analysis of assured water supply because it is one of the
9 issues that we have before the ALJ today. What is
10 assured, an analysis of assured water supply?

11 A. An analysis of assured water supply is an
12 application designed for master developers. In most cases
13 very large developments are not fully engineered to the
14 point where they have recordable plats. That's one of the
15 key elements that is required for a certificate of assured
16 water supply. So the analysis is designed to allow a
17 large developer, large master-planned communities to
18 submit evidence of various elements for assured supply
19 without having to have the full detail needed for a
20 certificate.

21 Q. What are the elements that are submitted for
22 an analysis of assured water reply?

23 A. They can vary. For a certificate of assured
24 water supply there are five basic requirements. They have
25 to prove physical, legal and continuous availability of

6100000982

1 the water supply for 100 years. They have to provide
2 proof of adequate water quality. They must provide proof
3 that the subdivision demands meet the plan for the AMA.
4 And they have to provide evidence that it meets the goal
5 of the active management area. And, lastly, they have to
6 provide proof of ownership.

7 The analysis is designed to allow a developer
8 to provide evidence of any number of those various
9 requirements. Most often, the key element that is
10 submitted for proof is that they do have the actual
11 physical availability for the subdivision.

12 Q. Now, why is that important, why is the
13 physical availability important?

14 A. The physical availability is one of the
15 elements that is not variable by changing your plan. That
16 is, that is limited by the hydrologic, geologic
17 limitations of the area. And if, for example, you have a
18 piece of the goal that is not met, you can modify your
19 plans to accordingly meet that. If the water physically
20 is not there, there is really nothing you can do.

21 So that's the key element. Most cases that's
22 the most expensive hurdle to try and meet so that, for
23 most developers, that's the key they try to prove up.

24 Q. And how do they establish that?

25 A. It varies by source of the water supply. In

1 most cases the source of water supply will be groundwater.
2 And in those cases a hydrologic study will be provided as
3 evidence as reviewed by a hydrologic staff.

4 Q. What about the other component of the
5 availability, continuous, what does that mean?

6 A. The water supply needs to be continuously
7 available and uninterrupted supply for the whole
8 100-year period. In most cases for the groundwater
9 supplies, it is considered to be continuously available,
10 because the basins are large enough that the water is
11 uninterrupted.

12 By contrast, if you had a surface water
13 supply, there could be an interruption either through
14 drought or some issue with the conveyance methods where a
15 backup or storage facility would need to be in place.

16 Q. The third point of availability you said was
17 legal availability. What does that mean?

18 A. That is correct. In such cases, such as a
19 surface water source, they have to prove that they
20 actually have the right to that water supply.

21 In a case such as this one, where it is a
22 groundwater source, they have to meet two elements for
23 proof of legal availability. One is the water supplier
24 has to have a right to use that groundwater. In this case
25 the water company does. They have a 56 right which is how

2860000019

1 we regulate water providers in addition because, as a
2 private utility, we defer to the Commission's
3 determination if they have an existing CC&N.

4 If the provider was attempting to serve
5 outside of an existing CC&N, we would not say that the
6 water was legally available to them.

7 Q. So does the Department of Water Resources,
8 then, want to see that the ACC has approved CC&N expansion
9 into a new area before approving an analysis of sufficient
10 water supply?

11 A. We would need to see that before, we would
12 need to see that before we would issue a certificate of
13 assured water supply.

14 Again, the way the analysis is set up, if they
15 were missing a specific element, we would call that out in
16 the analysis and issue the analysis stating that they have
17 met four of the five, or three of the five. But we would
18 make note that that element has to be met before any
19 subsequent certificates could be issued.

20 Q. Mr. Dunham, I am going to show you Exhibit,
21 Applicant's Exhibit A-1. And that is an analysis of
22 assured water supply dated October 11th, 2002 for Voyager
23 expansion. Are you familiar with this?

24 A. Yes.

25 Q. Let's just talk about the first point,

1 physical, continuous and legal availability of water.
2 What does the analysis provide in terms of Voyager Water
3 Company's expansion area?

4 A. This analysis showed that there was a
5 hydrologic study submitted; that the department did find
6 that enough physical supply was available to meet the
7 master plan as presented; that, let's see, the legal
8 availability was met because of the approved extension of
9 the CC&N. And again the continuous availability was met
10 because it is a groundwater source.

11 Q. Thank you.

12 Now, Mr. Dunham, one of the other factors that
13 you said were necessary to establish a certificate of
14 assured water supply was the quality of the water. Based
15 upon this, does this analysis of assured water supply
16 establish that?

17 A. Yes, it does. We reviewed the compliance
18 status for the provider. Looks like there were --
19 according to analysis here, the date of that report was
20 May 16th of 2002. And it is stated, according to DEQ,
21 that the provider was in full compliance.

22 Q. The other points that you raise were
23 consistency with the management plan and management goals
24 for the Tucson Active Management Area. And I see that the
25 analysis breaks it out into two sections.

1 Would you explain first what does this
2 consistency with the management plan mean and why is that
3 important for the continuance of assured water supply?

4 A. For large subdivisions, they are required to
5 meet the consistency with management plan. In this case,
6 the models as presented under the analysis will be using
7 low-flow plumbing, they will be encouraging low-water-use
8 landscaping, and that the proposed golf courses are within
9 the Tucson Active Management Area's allocation for golf
10 courses.

11 Q. So is it fair to say then that the proposed
12 expansion plans are consistent then with the plan for the
13 area?

14 A. That's correct.

15 Q. The next one is consistency with the
16 management goal. How is that different? What does that
17 mean?

18 A. The plan by contrast, the plan would be the
19 methodologies to use such as, again, like I mentioned,
20 elements such as low-flow plumbing, low-water-use
21 landscaping, et cetera. The management goal can vary by,
22 does vary by AMA. And in the Tucson AMA, the attempt is
23 to get into safe yield by 2025.

24 What that means for a certificate applicant is
25 that, depending upon which management period they are in

6100000982

1 when they apply for their certificate, they are allowed to
2 use a certain amount of groundwater. The remainder of
3 that total use has to be made up with renewable supplies.
4 That allocation factor decreases as we move into the
5 future until, at 2025, all new development is, has to be
6 100 percent renewable supplies.

7 For this particular application, the applicant
8 stated that, at the time of the certificates, they will
9 enroll all of the land within each subdivision within the
10 Central Arizona Groundwater Replenishment District.

11 Q. And they stated that the company would or the
12 individual builders and developers would?

13 A. It would have to be the individual builders
14 and developers, because the enrollment process is, it is
15 required that the actual landowner enroll in the GRD and
16 enter into the necessary covenants and restrictions that
17 the GRD requires.

18 Q. Once the enrollment takes place, how do the
19 developer/builders take care of that requirement to get
20 water replenished through GRD?

21 A. During the enrollment, it is a two-phase
22 approach for the GRD. The landowner actually has to
23 enroll to enter those restrictions with GRD. The second
24 part of that, there is also a reporting obligation
25 agreement that is entered into with the water provider and

1 the GRD.

2 What that states then is, at the end of every
3 year, the water company will report to the GRD the actual
4 water delivered on a per-lot basis within the subdivision
5 to the CAGR. The GRD then estimates what, of the water
6 delivered, is the allowable groundwater use. The
7 remainder, the excess groundwater then all has to be
8 recharged.

9 GRD goes out, purchases excess groundwater or
10 other supplies, replenishes that volume of water somewhere
11 within the AMA. And then the cost of that activity is
12 reported to the County Assessor's Office. And eventually
13 that shows up on the property owner's tax, property tax
14 bill.

15 Q. So the individual customer of the water
16 company ends up paying for the amount of water that they
17 are replenishing essentially?

18 A. That's correct, the individual lot owner.

19 Q. Okay. Now, the last point here that is part
20 of the components and requirements for a certificate is
21 financial capability of the owner.

22 What does that mean and how is that evaluated
23 by ADWR?

24 A. The certificate, we are required to review the
25 financial capability of the developer when we issue the

1 certificate to complete the construction of all necessary
2 infrastructure to get the water to the subdivision.

3 Q. Now, do you have county staff that takes a
4 look at all the financial reports? Or how do you go about
5 doing that?

6 A. We defer to the actual platting entities.
7 They are also required under state law to ensure that,
8 once they record and approve a plat and start approving
9 building permits, that all of the necessary utility
10 infrastructure, there is enough financial capability to
11 complete those. So that would be in addition to all the
12 necessary water-associated equipment, wells, storage, et
13 cetera. There is also sewer components, electrical,
14 roads, all the other associated utilities.

15 Q. So who would be the entity that has the
16 information to establish the financial capability? Is it
17 the water company or is it the subsequent subdividers?

18 A. Ultimately, what we -- in most cases we rely
19 on the county or the city who is actually recording the
20 plat. They require the necessary bonding to complete all
21 of those, the infrastructure. Occasionally we have had
22 cases where an individual subdivider presents that bonding
23 evidence to us directly.

24 Q. Okay. And in terms of the analysis of assured
25 water supply for Voyager Water Company here, what is the

1 status of the financial capability?

2 A. We did not review that. And that will be
3 reviewed during each individual certificate application.

4 Q. Okay. Thank you.

5 I have one last question on the analysis. It
6 says it has a term of ten years. How do you, how does
7 ADWR arrive at that term and what happens during that term
8 of ten years?

9 A. The ten-year time frame was developed using
10 our rules promulgation process. What we do is, any
11 competing applications in the area, we consider the full
12 demands associated with this application to be in place
13 for a period of ten years. So that's one of the
14 advantages to a large master builder applying under the
15 analysis when they are not actually ready to plat yet, is
16 that, if there are competing sources for the water in the
17 area, we consider those demands to be in place.

18 Q. Now, you talked about the analysis of assured
19 water supply here as meeting some but not all of the
20 requirements for the certificate of assured water supply.
21 But is there anything else that is required to be able to
22 obtain a certificate of assured water supply other than
23 these five elements you have talked about?

24 A. One of the components is, again, we need to be
25 able to review, for the certificate, we need to be able to

1 review an actual recordable plat. And for the analysis,
2 we will accept just a general land use plan.

3 Q. When you say a recordable plat, what level of
4 detail are you looking for?

5 A. What we would ask for is the actual plat that
6 is going to be recorded. If -- one of the elements we
7 look at is to make sure all of the potential demands
8 associated with the subdivision are accounted for. So if
9 there are changes to the plat after we issue the
10 certificate, it can invalidate the certificate and the
11 applicant would have to start over with the new
12 application.

13 Q. Okay. You also talked about the designation
14 of assured water supply and that's one of the options that
15 Voyager Water had. How is a designation of assured water
16 supply different from a certificate?

17 A. The certificate is tied to a specific plat and
18 for that plat and that piece of land only. The
19 designation covers the water provider for the system in
20 its entirety.

21 One of the key differences between the two is,
22 as a water provider builds out within their service area,
23 there are other associated demands that they will be
24 serving which do not have or are not accounted for under
25 the assured supplied purposes. If it does not meet the

1 definition of a subdivision under the Department of Real
2 Estate guidelines, which is six or more lots, we do not
3 review it for assured supply purposes. Contrasting that
4 with a designated provider, their system in its entirety,
5 all of their deliveries, meets the assured supply
6 criteria.

7 Q. So is the designation then acquired by the
8 water company?

9 A. That's correct, whereas, yes, in contrast, the
10 certificates are acquired by the individual landowner
11 and/or developer.

12 Q. How else does the designation differ from the
13 certificate of assured water supply?

14 A. As I stated, the system overall meets all of
15 the assured supply criteria. So, for example, meeting the
16 consistency goal requirement, if the provider became
17 a member of the CAGRD as a member area, all of the
18 deliveries in that water provider would be accounted for.
19 Whereas the water company would not have to do the
20 lot-by-lot reporting in breaking it down by what areas are
21 actually enrolled in the GRD and what are not.

22 Q. Then how does the replenish -- how do the
23 replenishment costs get paid?

24 A. By contrast, the designated provider, those
25 costs are applied directly to the system overall. So the

6100000932

1 owner of the water company, the water company or the city
2 or town has to pay those replenishment fees, whereas with
3 the certificates, it is the individual lot owner that has
4 to pay the fees.

5 Q. Thank you.

6 You had mentioned that, in the event that a
7 subdivision plat is changed after a certificate of assured
8 water supply is issued, that plat might have to go back
9 through the certificate process again, is that correct?

10 A. That's correct.

11 Q. And why is that?

12 A. We -- it depends on the detail, level of the
13 change, but in most cases the plats are changed to a
14 significant degree where that impacts the demand
15 estimates. So we have to rereview to make sure that the
16 water is physically available to the subdivision in
17 addition to making sure it is also consistent with the
18 goal and with the plan.

19 Q. I have a belated question then. In the event
20 that a piece of -- you said a certificate of assured water
21 supply is issued to a subdivision plat owner and the owner
22 of that property. If that property changes hands, if it
23 is sold off as a parcel or a block to a new owner, what
24 happens to the certificate that has been issued?

25 A. If the new owner has more than six or more

61000000982

1 lots, the original certificate for that area is invalid
2 and the new owner has to come back and obtain a new
3 certificate of assured water supply. It is tied not only
4 to the specific plat, it is also tied to the ownership.
5 So if any of the conditions change, the certificate is
6 invalid and a new certificate must be obtained.

7 Q. The Corporation Commission decision in
8 conditionally approving the CC&N for Voyager's area first
9 by one year and then extending it for another ten months,
10 it requires that the certificate of assured water supply
11 be obtained within that one year or one year plus 18 month
12 period.

13 Based on your experience managing the assured
14 water division at ADWR, is that one year or one year and
15 18 month period a reasonable time period that you would
16 usually see for a subdivider or a developer of a property
17 of this size to be able to get back to -- to get a
18 certificate?

19 A. In most cases it is not. For the smaller
20 subdivisions of, you know, say 50 lots or less, the
21 certificate can be issued and most of those projects can
22 be completed in a fairly short time frame. But for large
23 master-planned communities such as this one, I am looking
24 at the analysis here, over 1200 lots, the buildout period
25 on that would probably be, you know, a 10- to 15-year time

6100000982

1 frame.

2 As I stated earlier, any time, in most cases,
3 large projects like that, the actual ultimate builder who
4 has to get the lot sales approved through the Department
5 of Real Estate is not the master developer. And so every
6 time one of the pieces of property changes hands and a
7 developer obtains any number of lots, they would have to
8 obtain a new certificate of assured water supply in order
9 for them to be able to complete the public report at the
10 Department of Real Estate.

11 Q. If the time frame to complete the development
12 takes longer than the ten years that is given in the
13 analysis of assured water supply, how does ADWR do that?
14 How --

15 A. By mutual written agreement we can, with the
16 developer, extend that time frame. In those cases, what
17 we would look to see is if they have made any progress of
18 what the likelihood of the progress continuing and the
19 project moving forward.

20 We would not as a matter of routine
21 continually extend those for an indefinite period of time
22 because there may be other developers in the area who are
23 ready to move today but may have a supply issue because of
24 the analysis information being in place.

25 Q. So would they have to come back with ADWR for

1 approval or hearing? What would be the process?

2 A. It would be a submittal. It would be a
3 letter, just a letter request.

4 MS. SAVEL: Okay, okay.

5 All right. Mr. Dunham, I don't have any more
6 questions for you.

7 ALJ WOLFE: Thank you.

8 Mr. Ronald?

9 MR. RONALD: Thank you, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MR. RONALD:

13 Q. Mr. Dunham, this analysis of assured water
14 supply, is this open to any developer to apply to get
15 this?

16 A. Yes.

17 Q. And have you seen other cases where developers
18 have asked for this?

19 A. Yes.

20 Q. And is this a, this method of having
21 individual developers come forward to get their
22 certificate of assured water supply, is that a method that
23 ADWR has used in the past?

24 A. Yes. Again, we are required to issue a
25 certificate to the landowner. So once the property

6100000982
286000019
1 changes hands and the actual home builder, the final
2 entity that will be marketing the lots, they need to have
3 the certificate in their name.

4 MR. RONALD: No further questions, Your Honor.

5

6

EXAMINATION

7 BY ALJ WOLFE:

8 Q. Good afternoon, Mr. Dunham. And again I want
9 to thank you on the record for coming and testifying
10 today. We really appreciate it.

11 A. You are welcome.

12 Q. I had a question about the difference between
13 a certificate of assured water supply and a designation.
14 I understand that the designation covers the entire
15 system.

16 My question goes to the criteria for obtaining
17 a designation of assured water supply as compared with the
18 criteria for a certificate obtained by a developer.

19 A. All five criteria that we mentioned earlier
20 are still in place. So the continuous, legal and physical
21 availability; consistency with goal, consistency with the
22 plan. And the financial capability in the case of a
23 designation, the financial capability is on the water
24 provider instead of the landowner, developer. And, again,
25 maintaining the designation, we also require that the

1 compliance with ADEQ's water quality requirements are
2 maintained throughout the life of the designation.

3 Q. Okay. Is the adequacy more stringent, are the
4 adequate requirements more stringent for a designation
5 that covers an entire system?

6 A. I am sorry?

7 Q. The availability. I am sorry.

8 A. Sorry. The adequacy program, everything
9 outside of the AMA I get confused.

10 The availability is the same within the Tucson
11 AMA. If it is a groundwater system, the depth of water at
12 the 100-year period is allowed to go down to 1,000 feet.
13 So that is not any different for the certificate or for
14 the designation.

15 Q. Maybe this is a technical question. It seems
16 to me that, if the developer is applying for a
17 certificate, and you have to see the plat, you would know
18 what kind of uses there would be for the water and would
19 be able to estimate how much water would be needed.

20 A. That's exactly the need for the detailed plat,
21 for the certificate.

22 Q. How do you determine whenever you have,
23 whenever you are looking at a designation for assured
24 water supply, how do you determine how much water will be
25 needed by the system?

6100006932

1 A. What we do is we take a look at their current
2 demands, so any water that is being currently served to
3 their customers. On top of that, they are required to
4 provide to us any -- all of the committed demands. And
5 that would be all of the customers they have agreed to
6 serve and recorded plats that are yet to be developed so
7 they are not actually receiving water. And then we are
8 required to estimate at least two years' worth of growth
9 and what those associated demands would be. In most cases
10 we rely on the historical growth rates to come to that,
11 that estimate.

12 And so using those three elements, we project
13 out what two, three, four, five years' worth of demand
14 would come down the line. We don't have specific detailed
15 plats to look at. So, again, we look at the total
16 historical water use.

17 And because in most cases they are using
18 groundwater, the provider is required to report their
19 actual pumping and use rates even if they are not
20 designated. As we move into the future with the
21 designated provider, they are required to give us a little
22 more detail about their actual use. And that's one of the
23 jobs of my office, is to make sure that those growth rates
24 and use rates are within what we projected under their
25 designation.

1 Q. And then the holder of a designation makes the
2 yearly reports under this CAGR?

3 A. If they are a member service area, that's
4 correct.

5 Q. Okay.

6 A. We would regulate their entire water uses for
7 the system. As a designation you may have a provider
8 other than the groundwater. GRD would only be concerned
9 about the groundwater use.

10 Q. Would it be more difficult for, say for
11 example, Voyager Water Company to get a designation of
12 assured water supply than having the developers come in
13 and get certificates?

14 A. Yes and no. One of the primary issues that we
15 face with private water companies is in most cases they
16 are relying on the use of groundwater. To become a
17 designated provider, they actually are not allowed to use
18 groundwater. They have to be 100 percent renewable
19 supplies.

20 If you become a member service area and are a
21 private utility, we have had difficulties in having water
22 companies be able to show enough financial capability to
23 be able to pay the associated GRD replenishment costs. So
24 in that case it is more difficult. But the requirements
25 overall for either certificate or for a designation are

1 the same.

2 Q. Okay. And just one last question. If you
3 know, has Voyager applied in the past for a designation of
4 assured water supply?

5 A. I am not aware of any such application.

6 ALJ WOLFE: Okay, thank you.

7 Redirect?

8

9 REDIRECT EXAMINATION

10 BY MS. SAVEL:

11 Q. Couple questions, Mr. Dunham. Why would it be
12 harder for the small private water company to have the
13 financial capabilities to establish the designation?

14 A. Again, the way the GRD is structured, they
15 have two member types. You are either a member land which
16 is associated with certificates, or you are a member
17 service area. Currently there is no method for the GRD to
18 be able to actually collect any of the costs associated
19 with replenishment from the end user, from the property
20 owner in the case of the certificates. And so that cost
21 falls squarely on the water provider to pay for that.

22 We have had -- the experience that we have had
23 is that it has been difficult for the private utilities to
24 be able to come up with, either through a rate structure
25 or as a pass through cost, to be able to directly account

1 for that replenishment cost and cover the needed cost for
2 that.

3 Q. One last question. In the setting of the
4 certificate of assured water supply, does ADWR have a
5 preference as to whether they would rather get an
6 application for the certificate from the master developer,
7 from the eventual subdivider, from the even smaller
8 property owner? What would be the preference, if there
9 was a preference?

10 A. Our preference would be, if it is a large
11 master-planned community, that the master developer obtain
12 an analysis of assured supply and then the subsequent home
13 builders that actually market the lots will obtain the
14 certificates.

15 Just from a logistics workload standpoint,
16 having to reissue certificates is very cumbersome.
17 Currently anywhere, depending on the month when we do the
18 analysis, anywhere from 40 to 60 percent of our workload
19 is reissuance of certificates of assured water supplies to
20 subsequent owners.

21 MS. SAVEL: Thank you. Thank you very much,
22 Mr. Dunham.

23 ALJ WOLFE: Thanks.

24 Anything further?

25 MR. RONALD: Nothing further, Your Honor.

1 ALJ WOLFE: Okay. Thank you for your
2 testimony today.

3 (The witness was excused.)

4 ALJ WOLFE: Ms. Savel?

5 MS. SAVEL: I would like to call Mark Weinberg
6 with WPI.

7 MARK WEINBERG,
8 a witness herein, having been first duly sworn by the
9 Certified Court Reporter to speak the truth and nothing
10 but the truth, was examined and testified as follows:

11

12 DIRECT EXAMINATION

13 BY MS. SAVEL:

14 Q. Mr. Weinberg, if you state your name and
15 address.

16 A. My name is Mark Weinberg. My address is 2200
17 East River Road, Suite 115, Tucson, Arizona.

18 Q. And who do you work for?

19 A. Diamond Ventures.

20 Q. How are you associated with WPI and Voyager
21 Water Company in this application?

22 A. WPI Kolb and I10 is a limited liability
23 company that is managed by Diamond Ventures.

24 Q. And what is your job in this?

25 A. I am vice president of development for Diamond

1 Ventures and project manager for -- of this Voyager
2 project.

3 Q. How long have you been working on the Voyager
4 project?

5 A. I have been working on it about three years.
6 We acquired the property midyear, 2001.

7 Q. Now, before you began working with Diamond
8 Ventures, I understand that you had some experience
9 working in a water company. Could you give us some
10 information about that?

11 A. I -- 20 years ago, actually in 1981, I was
12 hired to manage a small water company, Foothills Water
13 Company, and also the Altman Company. And I managed
14 Foothills Water, which was subsequently acquired by Canada
15 Hills Water Company, for about 12 years. I managed the
16 water company from 1981 until 1993 when it was acquired by
17 the town of Oro Valley.

18 Q. And as the manager what was your job in
19 managing the water company? What did you do? Everything?

20 A. Well, I did, I managed the people that managed
21 the company, dealt with the issues related to providing
22 water service to customers, providing new installations to
23 developers, just devoted everything that you could do in
24 the management of a small utility company.

25 Q. And that company was when it was regulated by

1 the ACC?

2 A. It was regulated by the ACC. When I started
3 it had 400 customers and when I left we had 6,000. So it
4 was, there was quite a learning curve for me in those
5 years.

6 Q. Well, let me turn to the development that we
7 are talking about today. You say that you have been
8 involved with the project for three years. What is your
9 estimate, as the developer, of your portion of the
10 property? How much longer do you anticipate being
11 involved in the Voyager project?

12 A. Well, we are, as I mentioned, we acquired the
13 property, I believe, in June of 2001. We initiated a
14 rezoning, the rezoning process, a few months later. We
15 had hired a consultant team.

16 There is quite a lot involved in rezoning the
17 piece of property, especially in the City of Tucson. You
18 have to do environment and biological studies,
19 archeological studies, master water reports, master sewer
20 reports, other utility studies, traffic impact analysis,
21 this whole litany and of tests and studies you have to put
22 together before you can even apply for rezoning. So it
23 took us about eight months to put the studies together to
24 be in a position to apply for rezoning of the property.

25 And once we applied to the City of Tucson, the

61000000982
1 rezoning took almost a year to accomplish. In May of this
2 year, we rezoned the property and got a successful vote by
3 the Mayor Council and rezoned the property for 900 lots.

4 Q. Do you have any other zoning entitlement or
5 development entitlement that you still have to go through
6 with the City of Tucson?

7 A. Well, once the property is zoned, then you are
8 at a point where you know how many lots that you can place
9 on the property and then it is time to take the property
10 from a zoning entitlement stage to a development stage.

11 So at that point in May, when we knew that we
12 were zoned for a 900-lot project, we went out to the
13 marketplace and we talked to home builders to get a sense
14 of what builders in Tucson were interested in the
15 property, what type of product they would like to put on
16 the property, what size lots they would like to see
17 designed on the property. And quite honestly, that
18 process takes a long time and we are still in the process
19 now.

20 We have identified three builders that would
21 like to develop in the Voyager project. They have come up
22 with five different lot sizes and we are in process now of
23 negotiating contracts with them so that we can have firm
24 commitments from builders for certain lot sizes and
25 certain -- in different parts of the property so we can

1 start a plat.

2 Q. Now, you then are not, WPI will not be
3 building homes then on the property?

4 A. That's correct. We do everything but build
5 homes. We do the land acquisition, the entitlements, the
6 zone -- do the platting, set up the master covenants and
7 restrictions, the design guidelines. We build all the
8 master infrastructure, off-site water, sewer lines,
9 booster stations, reservoirs. We build a
10 seven-and-a-half-acre on-site park, landscaping, and we
11 will even plat the individual subdivisions. But at that
12 point we sell them to home builders and they do their own
13 lot development and build their own homes.

14 Q. How long do you expect this, the process of
15 getting to the point where you sell them to the individual
16 subdividers and builders, to take?

17 A. At the point we are now, which is negotiating
18 contracts with builders, as soon as we finalize this
19 process, which is likely to take another couple of months,
20 and we know exactly the number of lots each builder would
21 like and which village they would like these lots and what
22 size those lots are, then we will begin the platting
23 process.

24 The platting process for a project of this
25 size, which is roughly 700 lots, will take about four

6100000982

1 months to plat for the engineers to prepare the plans.
2 And once the plan is prepared, it will be submitted to the
3 City of Tucson. And generally it takes about six months
4 for the City to review the plat and for the developer to
5 get all the approvals they need to be in a position to
6 move forward. Let me clarify that.

7 In the six-month process would be the time
8 frame it takes to get an approved tentative plat. At the
9 point we get an approved tentative plat, we can then start
10 designing the subdivision improvement plans, which include
11 the design of the streets, the design of the on-site
12 sewers, the water system, utility system, the park, and
13 then prepare the final plat so that a final subdivision
14 plat can be recorded. All the master and subdivision
15 infrastructure plans can be approved by agencies having
16 jurisdiction and construction can begin.

17 Q. And is the final subdivision plat that is
18 recorded, that is what you take in hand to ADWR, is that
19 correct?

20 A. Yes.

21 Q. Okay. So we are looking at three months for,
22 three months for negotiation, seven months for tentative
23 plat preparation, six months to run it through --

24 A. And then --

25 Q. -- the process?

286700019
1 A. These are approximate dates. It could take
2 more or less depending how quickly we can get the plans
3 done, how receptive the City of Tucson staff is and the
4 type of job we do preparing the plans. If we do a good
5 set of plans, it takes less time; if we are a little
6 sloppy, it takes more time.

7 Q. After you get the tentative plan approved, how
8 many months or so to get the improvement plans done?

9 A. Improvement plans for a project of this size,
10 if we presell all the lots, probably another three months
11 to prepare. And each agency has its own time frames.

12 You know, the water company takes probably
13 less time because it is smaller. The wastewater company,
14 it is a regional company and probably a little longer. So
15 it depends on the agency. But, again, to get all the
16 approvals for a project this size will probably likely
17 take about six months.

18 Q. Okay. So my count is that's 10, 16, 19, 25
19 months that you are looking at after your rezoning is
20 approved to be able to get to the point you can start, you
21 can do your final plat?

22 A. It should take less than that. I am giving
23 you a time frame, time frames, beginning to end. But a
24 lot of these plans overlap.

25 Q. Overlap.

1 A. If you are preparing the plat and you believe
2 the plat is going to get approved, then you will start on
3 the improvement plans before you get final approval. So
4 you try and condense the process as much as you can. It
5 will probably take another 12 to 18 months to get all the
6 approvals that I have just outlined.

7 Q. Now, Voyager Water Company has requested that
8 the ACC accept the analysis as -- to establish that there
9 is adequate water supply instead of asking either the
10 water company or the master developer to get a certificate
11 or, in the alternative, to have the individual subdividers
12 get the certificate at the time that they are doing
13 subdivision platting.

14 From your perspective as master developer, do
15 you have any objection to that?

16 A. No, I don't.

17 Q. And why would that be beneficial to you?

18 A. As you have noted earlier today, we have an
19 analysis of assured water supply now. As we plat the
20 property and sell it to home builders, they are going to
21 have to apply for the Department of Water Resources to get
22 the final certificates anyway. So it seems like a logical
23 way to develop the property.

24 Q. They also -- we have also requested that the
25 ACC remove the condition that we get approvals to

2860000019
1 construct from ADEQ for the entire property and have it be
2 done on a subdivision-by-subdivision or parcel
3 development-by-parcel development basis.

4 Do you have any objection as one of the master
5 developers to that idea?

6 A. No. And actually it is more practical do it
7 that way. You know, for this particular project, as I
8 mentioned earlier, we received our rezoning approval in
9 May. As soon as we knew the number of lots that we were
10 entitled to develop, we started to design.

11 We met with the water company's master -- the
12 water company's engineering consulting firm. They did a
13 water modeling study to determine the size of water mains
14 that need to be constructed by the water company that
15 serve our development, the size of reservoir that needs to
16 be constructed to provide not only water service but fire
17 flow capacity, the size of the water booster station. And
18 once they completed that study, we hired them to design
19 the off-site waterline, which is the certificate that you
20 presented earlier today.

21 So we have designed the off-site waterline.
22 The reservoir has been sized in the design, designed by
23 the company last week. The booster station has been sized
24 and designed by the water company last week, submitted to
25 the health department for approval.

610000582

1 But all the -- there are six and a half miles
2 of streets in this project. So to design every single
3 waterline and get certificates to construct for every
4 single waterline, to be able to do that now is
5 unrealistic. And to anticipate that you have gotten every
6 single one, you didn't miss one, it is more reasonable, I
7 think, to require that the company, that the developer is
8 moving forward designing water systems as it can and is
9 showing progress in working towards completion of a phased
10 project than requiring every single certificate to file.

11 Q. One of the questions is -- one of the options
12 that Voyager Water Company has was to either get a
13 designation of assured water or certificate of assured
14 water supply. And Voyager is moving towards the idea of
15 having individual subdividers get a certificate instead of
16 a designation.

17 Were you involved at all in that discussion of
18 which was better?

19 A. No, I wasn't. But having managed a water
20 company, I recognize that I don't believe water companies
21 can pass through the cost of getting a designation. So
22 generally, if a water company is acting as a water company
23 rather than as a water company slash developer, they would
24 rather have landowners get certificates for the land they
25 own rather than have the water company get a designation

1 for all the land in its certificate.

2 Q. And that is because the certificate is better
3 because, from your experience --

4 A. Well, I don't know if it is better. I think
5 it accomplishes the same thing. The water company, if it
6 can't recapture cost from the designation and it doesn't
7 own the land benefiting from the designation, there is
8 really no incentive for the water company to get a
9 designation.

10 MS. SAVEL: I understand. I don't have any
11 additional questions, Mr. Weinberg.

12 ALJ WOLFE: Thank you.

13 Mr. Ronald?

14 MR. RONALD: Thank you, Your Honor.

15

16 CROSS-EXAMINATION

17 BY MR. RONALD:

18 Q. Mr. Weinberg, one of the alternative
19 propositions that Voyager put forth was that, if the
20 certificate of assured water supply is not required by the
21 ACC from Voyager but rather individual developers, that
22 these developers would have to submit their own
23 certificate of assured water supply to the ACC.

24 Would you be willing to do that?

25 A. Yes. I mean, yes, we would be willing to do

1 it or subsequent buyers of land that we know.

2 Q. What would be your time frame for that?

3 A. Well, it really depends how quickly the
4 project sells. It looks like, sitting here today, that we
5 are going to sell this entire project at one time and it
6 won't be phased over a couple of years.

7 So I think it would be, my best guess is that
8 the platting and subsequent sales to builders will be
9 accomplished over the next couple of years. When a
10 builder buys the land and applies for a certificate, I
11 think it takes about four months to process through
12 Department of Water Resources. It is two; two, three
13 years is a reasonable time frame.

14 Q. If there was a requirement that you submit
15 those certificates within two years, do you think that
16 would be reasonable from your perspective?

17 A. I think it would be, I think it is achievable.
18 And we would have to work hard to meet that time frame. I
19 think three years is reasonable. I think two years may be
20 a little aggressive. But if it is two years, then we will
21 work harder to try and accomplish it.

22 Q. We talked about applying for the certificate
23 after the rezoning has happened. As far as the approval
24 to construct from ADEQ, as the developer, do you also want
25 the rezoning to be done before you proceed with applying

1 for that approval to construct?

2 A. Yes. We can only apply for approvals to
3 construct for water lines that are designed. And so it is
4 only after the project is rezoned that we know where the,
5 you know, what the size of the off-site line needs to be
6 and can determine where that off-site line can be located.
7 So we can design the off-site line, but then it is the
8 platting process after the rezoning that the sizing and
9 location of all the on-site lines can be determined and we
10 need approvals to construct then filed with the Pima
11 County Department of Health.

12 MR. RONALD: No further questions, Your Honor.

13

14

EXAMINATION

15 BY ALJ WOLFE:

16 Q. Good afternoon, Mr. Weinberg.

17 A. Good afternoon, Judge Wolfe.

18 Q. So, from your testimony, talking about
19 approvals to construct from the Pima County Department of
20 Health, am I to surmise you wouldn't get approvals to
21 construct from ADEQ at all?

22 A. We submit to PDEQ, Pima Department
23 Environmental Quality.

24 Q. And they act as an agent?

25 A. I believe so, yes.

1 Q. And you weren't present at the hearing for the
2 request for an extension of the CC&N, it took place in
3 2001, were you?

4 A. No, I was not.

5 ALJ WOLFE: That's all the questions that I
6 have.

7 Redirect?

8 MS. SAVEL: None, Your Honor.

9 ALJ WOLFE: Thank you for your testimony
10 today. You are excused as a witness.

11 THE WITNESS: Thank you.

12 (The witness was excused.)

13 ALJ WOLFE: Does that complete the
14 presentation of your case today?

15 MS. SAVEL: Yes, it does, Your Honor. Thank
16 you.

17 ALJ WOLFE: Thank you.

18 Would you like to call your witness?

19 MR. RONALD: Yes, Your Honor. Staff calls Jim
20 Fisher.

21 ALJ WOLFE: Before I do that, did you want to
22 have Exhibit A-1 admitted to the record? It has been
23 docketed so it is not necessary. It is up to you.

24 MS. SAVEL: I have it right here and the court
25 reporter labeled it so might as well.

1 ALJ WOLFE: And does Staff have an objection?

2 MR. RONALD: No, Your Honor.

3 ALJ WOLFE: A-1 is admitted then. And you
4 mentioned you had something marked A-2. Was that
5 something that you wanted to have admitted, also?

6 MS. SAVEL: Certainly, Your Honor. Thank you.

7 ALJ WOLFE: Okay. I forget what that was.
8 Can you identify it?

9 MS. SAVEL: That was the Pima County
10 Department of Environmental Quality certificate of
11 approval to construct water and/or wastewater facilities
12 for Voyager Water Company.

13 ALJ WOLFE: Okay. Is there any objection to
14 that being admitted?

15 MR. RONALD: No, Your Honor.

16 ALJ WOLFE: A-2 is admitted.

17

18 JIM FISHER,
19 a witness herein, having been first duly sworn by the
20 Certified Court Reporter to speak the truth and nothing
21 but the truth, was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. RONALD:

25 Q. Please tell us your name and business address.

1 A. My name is Jim Fisher. My business address is
2 Arizona Corporation Commission, Utilities Division, 1200
3 West Washington, Phoenix, Arizona.

4 Q. And what are your duties at the Corporation
5 Commission, Mr. Fisher?

6 A. Part of my duties as an executive consultant
7 are the analysis and recommendations on requests for
8 extensions of service territory for water and wastewater
9 as well as original certificates.

10 Q. And in your duties did you review an
11 application from Voyager Water Company to modify or amend
12 a Commission Decision?

13 A. Yes, sir, I did.

14 Q. And specifically that was Decision No. 64406?

15 A. Subject to check, yes, it was.

16 I should believe my own attorney, shouldn't I?

17 Q. Do you have any general comments about the
18 request?

19 A. Yes, I do.

20 Q. And what are those?

21 A. And I want to apologize to Judge Wolfe as far
22 as I understand her confusion as far as the request is
23 multi-part.

24 The general thrust Staff agrees with, in that
25 we have a decision and we have a company that needs to

226000019

1 comply with a number of matters. And we agree with the
2 idea that, with the interwoven regulatory fabric that we
3 have with the Department of Water Resources, a master
4 developer such as the requester, with the applicant, has
5 submitted an analysis of assured water supply, and it
6 seems to be our review of the code and their testimony,
7 our understanding of it, it makes sense to accept that.

8 As to the certificate of assured water
9 supplies, those are normatively submitted by the
10 subdivider. And we would disagree.

11 So we would agree with number one on the
12 request. We would disagree to a certain regard on number
13 two, in that totally eliminating the cause, the
14 certificate of assured water supply, may not be
15 appropriate. It is standard operating procedure. It
16 should be continued.

17 As to number three, I would have to review,
18 review the verbiage on that again. But I believe, if I
19 disagree with number two -- it is just an incredible
20 matrix we have here -- I agree with number three. I agree
21 with number three that, as the master developer will not
22 be obtaining the cost, the certificate of assured water
23 supply should be provided by the appropriate subdivider as
24 was outlined by the Department of Water Resources'
25 witness.

6100006982

1 As to number four, ADEQ approvals to construct
2 are normatively provided with the associated main
3 extension agreement. I would anticipate that this, like
4 any other development, is done in phases and, as those
5 phases are ripe for submittal for approval to ACC Staff
6 for the main extension agreement, that it be submitted in
7 that juncture and that there be no time frame requirement
8 on main extension agreements and the approvals to
9 construct.

10 That leads us to number five, which is the one
11 Staff really wrestles with. Total elimination of any time
12 frames is very difficult for Staff to recommend. In part
13 and parcel of review and analysis and recommendation of a
14 certificate of convenience and necessity is the necessity.

15 Voyager Water came in to the ACC, made
16 representations that there was a need for this, for the
17 extension of their process. Perhaps we got ahead.
18 Perhaps we didn't understand the time frames entirely. We
19 have already provided one significant continuance or
20 extension of time to comply. And I believe that providing
21 an additional two years from this date would be another
22 significant time to comply.

23 Testimony from the developer indicates that
24 would be really pressing for their time frames on putting
25 the burden on the subdividers to obtain and submit the

28600000982
1 certificates of assured water supply.

2 So I don't want to toss a coin as I sit here
3 testifying in front of you, Your Honor, but I know that
4 two years after an initial extension has been recommended
5 before, and Staff always takes comfort in some sort of
6 standard operating procedure.

7 By the same token, I don't want to prejudice
8 the applicant and the developer. Obviously, there may
9 have been a misunderstanding as to whether or not the
10 initial need was sufficiently understood by both the
11 Commission, the applicant and the developer.

12 So I would like to see the certificates of
13 assured water supply provided within two years of
14 January 2003 at the outset. But if the Commissioner or, I
15 am sorry, if the Commission and Hearing Officer does not
16 adopt that, I wouldn't lose any sleep.

17 So those are my general comments.

18 Q. Do you have anything else you want to add,
19 Mr. Fisher?

20 A. No, I don't.

21 MR. RONALD: No further questions, Your Honor.

22

23 EXAMINATION

24 BY ALJ WOLFE:

25 Q. Good afternoon, Mr. Fisher. At the hearing,

286000019

1 were you the witness at this hearing?

2 A. Probably. I am not sure. I believe so.

3 Q. Okay. The company didn't object to your
4 recommendation at the hearing, did they, if you remember?

5 A. I don't believe -- subject to check, Your
6 Honor. Your Honor, I will accept your representation.

7 Q. And why did Staff recommend that these
8 compliance filings be made within 365 days of a decision?

9 A. As I explained previously, Your Honor, Staff
10 obviously takes comfort in having standard operating
11 procedure.

12 More importantly, an applicant needs to
13 establish that there is in fact a need. So we try and
14 recognize that need in some sort of normative planning
15 horizon and try and get all of that within the same
16 ratings or decision matrix.

17 It was our understanding that those
18 recommendations were okay at the time we made them and
19 that they were accepted and adopted by the Commission as
20 part of the initial decision.

21 Q. Does your acceptance of an analysis of assured
22 water supply -- or are you recommending that the
23 Commission accept the analysis of assured water supply in
24 lieu of the certificate of assured water supply by the
25 developers?

1 A. My recommendation would be that the Commission
2 accept the analysis of assured water supply in conjunction
3 with the later-submitted certificates of assured water
4 supply.

5 I believe we have run into a timing situation.
6 And I -- and the witness that was from the Department of
7 Water Resources obviously is subject matter expert. And I
8 think his testimony was very persuasive that it would be a
9 normative process for a master developer to obtain that
10 and that, as they spend so much of their workload on
11 transferring or reevaluation of certificates of assured
12 water supply when property changes hands, Staff wouldn't
13 want to push the Department of Water Resources to do yet
14 one more review and transaction that would result in the
15 same analysis.

16 Q. I note also in reviewing this decision that it
17 doesn't appear that Staff recommended any sort of rate
18 review as a result of this extension of the CC&N. Would
19 Staff normally recommend a rate review for an extension of
20 this size?

21 A. Staff normally does not recommend rate reviews
22 in association with extensions. As I sit here today, I am
23 not familiar enough with Voyager Water Company as it
24 exists today and how these 900 lots will affect it. I
25 think that it is pretty easy to say that in five years

1 there may be a different rate situation and having a
2 review of Voyager associated with that would be
3 appropriate. Staff normally recommends on a new CC&N that
4 there be a rate review.

5 ALJ WOLFE: Thank you.

6 Ms. Savel?

7 MS. SABEL: Thank you.

8

9

CROSS-EXAMINATION

10 BY MS. SABEL:

11 Q. Mr. Dunham testified that the analysis of
12 assured water supply is good for ten years from May 2002.
13 So ten years, to about May 2012. Split the difference
14 with me. How would you feel about -- I am just kidding.
15 Kind of.

16 So in other words, at May 2012, or coming up
17 to that time, if Mr. Weinberg and cohorts haven't managed
18 to get this thing up and running, off the ground to DWR
19 and show them why it is that they deserve to get their
20 groundwater quantity basically held for another period of
21 time, and he didn't sound too receptive to the idea of
22 repeat extensions, would Staff feel comfortable with
23 something a little more than two with the idea that we are
24 looking at an eventual horizon of ten years where ADWR is
25 going to have to relook at the whole analysis of assured

1 water supply they have established, the availability and
2 adequacy in place; not as short as two, not as long as
3 ten, something in that ballpark, especially since
4 Mr. Weinberg said that three would be, and I am used to
5 talking to developers and I know they like to hedge their
6 bets on time, but three would be probably ballpark there?

7 A. We were looking to see where he was at on the
8 time frame, because the -- Mr. Weinberg is very important
9 to this process. It is Voyager Water that came in and
10 made the representations, assured us that certain things
11 would be done within a certain period of time, that
12 certain conditions were okay.

13 That goes back to the need. I am not whetted
14 to two years, but I also have an Administrative Law Judge
15 who I know and respect and needs me to at least have an
16 opinion when I sit on the witness stand. So I have to
17 come up here with two years.

18 Am I whetted to it? Do I believe it needs to
19 be done? Probably not. These are very fact specific. By
20 the same token, we have to have some sort of process that
21 applicants recognize and can move forward with.

22 I believe the ten years you spoke of is
23 associated with the rule. I don't believe we have a
24 particular rule on that. So it is very fact specific and
25 it is associated with a particular decision.

1 If the Hearing Officer were to go along with
2 three years, I would understand that. And that would give
3 Voyager far greater latitude than other water companies in
4 similar situations have gotten, at least by 12 months. In
5 the scheme of things, is there a reason for that? Well,
6 quite possibly. So...

7 MS. SAVEL: Thank you, Mr. Dunham.

8 THE WITNESS: Fisher.

9 MS. SAVEL: Oh, Fisher.

10 THE WITNESS: That's okay. He has glasses.

11 MS. SAVEL: He has glasses and he is not here.

12 ALJ WOLFE: Redirect, Mr. Ronald?

13 MR. RONALD: No, Your Honor.

14 ALJ WOLFE: Thank you for your testimony
15 today, Mr. Fisher.

16 (The witness was excused.)

17 ALJ WOLFE: And that is your only witness
18 today?

19 MR. RONALD: Yes, Your Honor. Staff rests.

20 ALJ WOLFE: Okay. Before I move to closing
21 statements, I have a question to ask of counsel.

22 I sort of expected to have a witness for the
23 company available today to ask this question of. But this
24 pertains to the five-year rate review requirement.

25 Do you know whether the company would be

1 opposed to having, in conjunction with this extension and
2 amendment of the decision, a requirement that it file for
3 a rate review at the end of the time period, at the end of
4 the extension period?

5 MS. SAVEL: Judge Wolfe, I have no idea. But
6 if the judge feels that would be an appropriate thing to
7 do, to take a look at the rates again, I wouldn't sit here
8 and object to it on behalf of the water company either.

9 We are in the process of a financing submittal
10 with the ACC. And we will be in our -- and our financial
11 statements are currently under scrutiny by ACC financing
12 and accounting staff pretty serious and we are going
13 through some subsequent data requests and having a really
14 good time with that. That may be well a result of that
15 process as well.

16 So I can't say specifically. But if the Court
17 felt that was something that was necessary, I think that
18 the judge felt it was necessary, we would be okay.

19 ALJ WOLFE: I think that explains
20 Mr. Johnson's presence in the hearing room.

21 MS. SAVEL: Yes. Mr. Johnson has been one of
22 the --

23 ALJ WOLFE: Now, if there is nothing else
24 procedurally, we can move to closing statements.

25 Do you have a closing statement, Ms. Savel?

1 MS. SAVEL: Well, Your Honor, I think Voyager,
2 I stated Voyager Water Company's request, both -- either
3 the alternative would be, one, that we -- that the ACC
4 would accept the analysis.

5 The big request is, in lieu of a certificate
6 of assured water supply, but we understand Mr. Fisher's
7 position and it is not an unreasonable one, that, in the
8 alternative, the individual certificates be provided by
9 the subdividers. And we are happy that Staff agrees with
10 us on the approvals to construct to be provided with the
11 individual subdivisions.

12 And we understand the concern with the time
13 frame. And we don't want to change the way that the world
14 works completely, trying to adjust a little bit, but not
15 necessarily change everything. And we would be happy to
16 work with Staff to work out a time frame that is
17 appropriate and that the ALJ is comfortable with as well.

18 Appreciate the opportunity to try something
19 new and have a chance to bring Mr. Dunham in to talk about
20 some of these issues and to identify some of the concerns
21 that both the developer and the small water companies
22 have. Really do appreciate the ACC hearing us on those.
23 Thank you.

24 ALJ WOLFE: Mr. Ronald?

25 MR. RONALD: Thank you, Your Honor. Staff

1 continues to support the request to modify, with the
2 conditions outlined by Mr. Fisher.

3 ALJ WOLFE: Okay. Thank you very much for
4 your attendance here today. This matter is adjourned.

5 (The hearing concluded at 2:52 p.m.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5
6

7 I, COLETTE E. ROSS, Certified Court Reporter No.
8 50658 for the State of Arizona, do hereby certify that the
9 foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 12th day
15 of November, 2003.
16
17
18

19 Colette E. Ross
20 COLETTE E. ROSS
21 Certified Court Reporter
22 Certificate No. 50658
23
24
25